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Use of force: defense of the law as challenges to peace and dispute resolution at the international level

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Abstract: The present work makes a historical backup of the use of force from the birth of the United Nations up to the present day. It is an important right for the evolution of international law but also for the resolution of disputes in the international context, where the use of armed force even unilaterally, as self-defense, as authorization issued or not by the Security Council now, follows other paths different from those of the past. The maintenance of peace and international security is a very difficult matter now due to the paralysis of the Security Council but also for political, geopolitical and historical reasons. The latter put in evidence the coordination of states, as a coalition not to follow the path of use of force as happened in the past but as a coalition of states, of institutions where wars now are addressed in a different. However, the resolution of disputes continues to remain open and human lives trampled upon. The use of force continues to be the protagonist of the right of the strong, of the winners, of those who, after the wars,

influences the global economic environment.

Keywords: right to armed force; international war; self-defense; collective sanctions; international criminal law; Ukraine; Gaza; international law; peacekeeping; individual and collective safety; use of unilateral force; authorizations from the Security Council; Charter of the UN; genocidal; war crimes; international crimes; international security; international responsibility; international crimes.

Introduction

The era of the birth of the Charter of the UN was a necessary reality in the years after the Second World War. The people were tired and needed a new reality, a new order to leave behind the anarchy of the past. The use of force had to be considered as a legitimate instrument for resolving disputes between states for the protection of the rights, interests and subjects of a new order that laid the foundations between bellum justum and bellum injustum (Henderson, 2024).

It was a rule for war operations or for the jus in bello. In the procedural field, it was a rule for forming the wars of the past, as a need with two directions. The use of force and interference in other people's affairs did not arise with the birth of the Charter of the UN, but much earlier (Gill, Tibori-Szabò, 2023).

International war and humanitarian law have had effects in war violence to humanize armed conflicts (De Hemptinne, 2019). The Hague law, especially after the peace conferences in the Netherlands of 1899 and 1907, was the basis of numerous other conventions and laws for the protection of war victims and civilians.

The convention for the improvement of the conditions of soldiers wounded in war of 1864 up to the four Conventions of 12 August 1949 had as their objective a legal corpus in the matter. The second, defined and integrated an additional protocol in 1977. It was related to the victims of international armed conflicts, a new law of international criminal justice that formed the history of the Nuremberg and Tokyo tribunals. These were the instruments, which prosecuted the international crimes, as a counterweight to impunity and towards the maintenance of international peace and security (Zourabichvili, 2021).

The Charter of the UN prohibited the use of force allowing, however, restrictions of an objective nature. Such restrictions were foreseen in the jus ad bellum (Liakopoulos, 2024), in jus in bello and the pact of the League of Nations with the aim to resolve international disputes peacefully. The arbitration and judicial regulations against non-compliant countries were of a subjective nature, sources that already used in the Locarno Pact of 1925, the Treaty of Paris, or the Briand-Kellogg Pact for

renouncing the war as early as 1928 (Henderson, 2024).

The right to force requires an operating necessity of international law, as a cause of exclusion of the offense, where the relevant situations are taken into account. The safety of human life as an exception in the period of war, admits the definition of military necessity.

The unilateral assessment during a Kriegsraison is a repeated reality of legal obligations, as norms of the law of war. The use of force in the strict sense thus takes on a binding value through the rules of war law and after the prior authorization of possible and imaginable violations of the obligations, that justify the reason for the war, that prevails over one's conduct.

Military necessity thus prevails from all the forces of the law of war and military necessity, where the formation of a rule within and outside of the Charter of the UN, has always been a necessity due to behaviors that transgress those who invoke military necessity. In a strict sense constitutes a cause of exclusion from an offense as a precise, specific, contractual rule, that provided for the regulation of effectiveness of a legal rule, that imposes obligations and also an effective scope.

The limiting function depends on the greater or lesser extension of an authorization aspect, that absolutely admitted the war aim. The potential character of every international armed conflict, as a military necessity, that invokes any direct behavior within the

authorization sphere of a military necessity, is a reaction to the conditions of an effective exercise of the law of war and a principle that contrasts with the law of war.

The right to force does not necessarily mean protection of human life. The same holds for the multiplicity of legal norms and of their distinct procedures, that form the norm against the conduct of hostilities. The humanitarian ratio of the ius in bello grasp a function of military necessity in latu sensu.

Moreover, the general right of states to exercise violence through an armed attack on the belligerent opponent has to do with the traditional conception of a general freedom of states to resort to war and without surprise to form a permitted principle. This is a reasoning where the conduct of an armed force against another state/s is present and connected with the advantage that a military action brings, i.e. to destroy the enemy.

Of course, there were limits to the initiatives, which determined the outbreak of numerous conflicts during the Second World War. It was a path which sanctioned the use of force, delimiting and outlining a new history which lasts up to the present day.

Collective security, use of force and the Charter of the UN

The use of force is referring to the ius imperativum, a mandatory right of an absolute prohibition as can be seen from Art. 1, par. 1 of the Charter of the UN (Pellet, 2014), which speaks for

international security, the maintenance of peace. By art. 2, par. 3 to resolve international disputes peacefully and art. 2, par. 4 that general prohibits the use of force. It is a general right of prohibition with the exception of Art. 51 of the Charter of the UN (Pellet, 2014). The latter is a collective and/or individual self-defense, an absolute right against every member of the UN.

The Security Council (SC) as the organ of the UN par excellence, is the body for maintaining peace and international security. Its measures that have to do with the right of self-defence are immediately at the table of the SC and do not prejudice the task, the power to interpret actions necessary to restore international peace and security.

The jus ad bellum is an element that has to do with self-defense, where in a compensated way, is part of the design of the Charter to a system of collective security, which was also based on some key points that we have noted up to our days in UN history (Green, 2024; Liakopoulos, 2024).

The use of force is the first important point of analysis for the UN (Pobje, 2024). According to art. 23 the SC is the body that exclusively deals with international peace and security. Its responsibility in a peaceful way has to do with the conciliatory function for the resolution of disputes and the related actions that respect threats to peace, violations and acts of aggression (Liakopoulos, 2020b).

Articles 39-42 (Pellet, 2014) deal with the functions and powers of the SC, such as for example, the certainty of existence of a threat for the peace, the violation of the peace and the act of aggression, powers that adopt the threat in related recommendations. These are decisions to establish the relevant measures for maintaining peace and international security according to Art. 41of the Charter of the UN.

The following articles, i.e. 43 to 50 give to the SC the adequate tools for the relevant actions. Actions that have to do with the creation of the armed forces, the armed wing of the UN to establish the special agreements to be concluded through the members of the Organization and the Security Council in collaboration with the members of the organization and the heads of state greater than the permanent members. Art. 53 (Pellet, 2014) contains coercive actions that need authorization for agreements, regional organizations according to what is indicated in Chapter VII of the Charter of the UN.

An excessively collateral damage that respects the use of force (Pobje, 2024) is a military advantage that provides for the attack as a whole. This is an interpretation that applies, from a tactical point of view, to the compliant behavior of the military who are secondary to hostilities. Thus, the rules of the law of armed conflicts are used by the combatants that have to do with an international armed conflict and which oblige states to take into

account damages against the people. Measuring the damages is a very difficult task given the disproportionate and flashy character they have. Collateral losses are considered as a complex, that justifies the needs of every military strategy, rectius of every use of force, as an advantage that can be achieved in every concrete situation.

What has the practice shown for the functioning of the collective security system?

Practice categorically and especially, in recent years, has shown the relative chaos that exists in the UN and especially within the SC. The risk of total failure has always been a topic under discussion, that we have seen in recent years and especially after the Russian invasion in the Ukrainian territory. An aggression, where its interpretative nature, within the Charter of the UN, has shown the alterations of an original system of collective security. Alterations, that are opposed to expansion, pursuant to art. 39, hindered the functioning of articles 42 and 51 (Pellet, 2014).

Art. 39 deals with the function of ascertaining a conflict situation. It is a reflection of conflict situations. The use of armed force is extended to every crisis of international security including the threat and violation of the peace and the act of aggression, where the SC has its discretionary power even with

a restrictive way.

The aggression and the existence of international acts are also included in Art. 8 of the Statute of the International Criminal Court (ICC), with special evidence after the Kampala conference of 11 June 2010, and in Resolution 3314 (XXIX), which defined the term aggression during the United Nations General Assembly of 14 December 1974.

The SC has no binding powers for its content, which appears as a right of international law, and it admits it in practice without doubts.

The threat of peace exercises discretion in situations where intervention is justified, that is in international and internal conflicts, international peace and in interstate wars. Situations within states where serious human rights violations and the use of force to maintain control over territory that is in disorder, are linked to refugee flows and security risks.

Even repressive war policies are discriminatory between various groups and their external effects on other states are the collapse of repressive regimes as we have seen in the case of Libya. These are lines of reflection, where the security relations of the UN with international law have exercised functions of a jurisdictional nature that are not foreseen in the Charter of the UN. However, they are evident through the establishment of ad hoc tribunals as for example in cases of the former Yugoslavia

and Rwanda.

Within this framework, the adoption of measures involving the use of force, especially in international crisis situations, is now a reality. It is a system where the provisions of the charter have been implemented by the armed forces of the UN according to Art. 43 et seq. of the UN. For more than forty years the political divisions among the members of the UN have created difficulties, if not paralysis, of its total mechanism. And all this because of the right of veto. It has attributed to the permanent members a procedure of paralysis according to Art. 27 of the Charter of the UN (Pellet 2014).

Peacekeeping operations organized for the maintenance of peace and the coercive re-establishment (peace-enforcement) of peace are now a limited reality. These have had as their general characteristics the delegation of the Security Council to the Secretary General of the UN through agreements with other states, i.e. through the command of international and domestic armed forces with the exception of cases related to civil wars and (failed) states that have no government to seek relative consent.

The authorization of coercive interventions by member states within the framework of the UN after the Crimean War of 1990 followed the same path that we saw in Iraq after the invasion and annexation of Kuwait. Traditional peacekeeping operations,

even with limits, can only use weapons to defend themselves within the function of maintaining peace and the coercive re-establishment of peace enforcement operations. We recall from the passage the basis of the war in Korea, where the absence of the delegate at the time of the empty chair policy at the SC, put the related work in crisis, the replacement of China did not, however, recognize the resolutions taken after the absence of its delegate.

As two important points for the intervention modality are the character of multifunctionality pursued by the extensive interpretation of the threat to peace pursuant to art. 39 and the humanitarian objectives that react to violations of human rights and to state offenses transforming themselves into an administration for the territories as we have seen in the case of Kosovo (Buirette, 2019).

Another important point of observation is the method of intervention that raises problems in the legal framework and in legitimacy. The lawfulness respects the principles of the Charter of the UN, which are distant from the scheme of the collective security system, that is envisaged in the use of force and based on the powers of the SC.

The authorization practice is part of a legal framework through the practice of peace keeping operations based on art. 42, which fall within the conciliatory function and can be exercised by the

SC in a practice, which is customary to the consensus of all states.

The legal framework notes a lack of effectiveness for peacekeeping forces for political, military and financial reasons always linked to non-permanent military contingents, which highlight the relative coordination, within rivalries and national components, thus verifying the relative involvement with military clashes of the use of armed force of a defensive nature, where human beings are in a difficult situation of vulnerability. This is a shield against the use of force, where belligerents present themselves in various theaters of war over time given the use of authorizations and the use of force that overcomes any inconvenience of a political or economic nature.

These rules derive from the system of the Charter, that is the implementation of art. 43 and the followings related to the collective security system. These rules are also evolving within the global geopolitical conditions favorable to the actions of the UN. Military interventions, such as those to the Golan, Lebanon, Cyprus, Suez and Congo are based on art. 42 showing the hyperactivity of the SC to peace-keeping operations and peace enforcement according to the objectives of the history, where the actions to undertake the SC, are connected with the legal basis, which reconstructed, in a unitary and legitimate way, the military intervention which was conducted under the umbrella

of the UN.

Uniteralistic practice

The unilateral practice starting from the nineties constituted the intervention model of the SC, multiplying interventions with the use of force, which were without authorization from the SC. This is a practice that has been ongoing for years, where legitimacy and lawfulness, within the role of the SC, respect the decisive power for military interventions. UN legality blocked illegitimate, illicit interventions against crimes against peace, where the lack of authorization of the SC, was a monopoly for the use of force with an organic way of hegemonic politics to the use of force deriving from the Charter of the UN and international law (Kagan, 2003).

The Bush doctrine did not put at the forefront the respective elements of international law for the protection of human beings but the humanitarian interventions of another era, where the use of preventive war was a war against terrorism, which promotes rogue states, the threat global and dictatorial regimes in the world of democracy and freedom (Vedaschi, 2021).

The legal legitimacy, the unilateral use of force and the implicit authorization from the SC as we saw in the case of intervention in Iraq in 2003 are interventions where the resolution of the SC affirmed the existence of a pure threat to peace and rules of a

conduct, that requires the parties involved to hand over the weapons of mass destruction, that are in possession of the government of Baghdad causing serious consequences, measures that were not authorized for force.

The implicit authorization of the use of force departs from the norm, considering the imperative character of the charter as the basis of international law, where the use of force could not be implied. Particularly, the war in the Gulf, is referred to Resolution n. 687 of the 1991 of the SC, where the government of Saddam Hussein, in Iraq, introduced some measures for the withdrawal of the allied occupation forces, through, the obligation of disarmament and demilitarization in the territory, that respected the so-called weapons of mass destruction. The inspection commissions sent to the UN monitored the disarmament process, where the SC through Resolution n. 1441 of 8 November 2002 requested a precise report for the armaments located in its territory. The serious consequences and violations of obligations, within the scope of the UN, for the uncontrolled use of weapons are shown a basis for immediate unilateral intervention in the area.

Legitimate defense

Art. 51 of the Charter of the UN was the only one that had to deal with cases of intervention of an attack without justification based on legitimate defense, thus, delimiting temporal, functional, spatial limits of a state-centric operational, where armed attacks by one state against others states as international actors refer to armed attacks and correspond to the crime of aggression. The extension of the relevant modern law of self-defense, as a "response" to an attack especially after the September 2011 in the twin towers, is not an application of the rule (Schmidl, 2009) but a subjective point, where the majority against non-state actors (Henderson, 2024), are operating in states other than those that based on self-defense, such as a global war.

Israel and the various Palestinian armed organizations as well as other collaborative groups, such as Hezbollah in Lebanon, admitted preventive legitimate defense against states and non-state actors, where attacks were imminent and based on unilateral assessments in a conclusive manner and as elements of accumulating events or of pin-prick theory. In such cases the attack is considered imminently and not in line with a series of events, which are placed in a space-time dimension of an overall nature, as a situation relating to the use of a legitimate defense, that will be concretized in its future context.

Within this context, we include the hypothetical threats, which concerned cases of exercise for collective legitimate defence, as reactions relating to the defense of the state acting against another state, which has as an object an armed attack (Tancredi, 2019), as an argument of an unable or unwilling state, where the ability, the will of the threats to peace, that came from non-state actors in their territory, were part of the war against ISIS. An external assistance of a coalition especially in Syria has limited its availability of international cooperation also including the United States after the air strikes on its territory (Nussberger, 2023). The United States was willing to participate and especially during 2015 against President Bashar al-Assad, who asked to follow military aid to Russia as an old-time ally. Thus, the appeal of the unable or unwilling state served other states of a coalition, that found justification in the classical legislation of its intervention.

Collective actions are now a phenomenon of a singular legitimate defense based on parceled titles, that justify in a personalized way each single state within a coordination between all the states of a coalition.

The defense of the attacked state has been effective for the operations of the relative conduct against a generalized conduct, as we have seen in the case of ISIS since 2014. From a functional point of view, collective legitimate defense has

invoked the intervention of a defense of a state under attack. Its humanitarian character was linked to the defense of the community of a territory of other states and object for violence, serious violations of human rights, the government apparatus of local power as we have seen in the case of NATO in Kosovo in 1999.

The legitimate defense, presented by many states, is based on the convincing invocation of the justifying causes of their interventions. This behavior is highlighted in a paradigmatic way in the war against ISIS. Indeed, it framed international crimes suitable to justify respect and invoke legitimate defense, such as coalition interventions, that is the invasion by the side of ISIS and the Sunni jihadist forces by sovereign states, through parties that are in their territories such as Iraq and Syria to constitute a state entity. Also, the relative Islamic caliphate has denounced the UN itself as a threat to peace in the area and as consequences at an international level.

Adversely, coalition interventions have to do with serious violations of the jus in bello as well as with very serious violations of human rights, such as acts of terrorism within states far from the region that is involved.

The unitary situation has a comprehensive character, not reducible to individual violations of the cause as a serious threat to the balance of interstate relations of a coalition that finds

grounds for reacting. Coalition interventions that find their justifications in the United States themselves, as leading countries of a coalition formed against a terrorist organization. The rule thus covers military interventions of a unilateral nature for states that achieve and pursue other objectives, interests for individuals such as the legality of the UN.

The Charter of the UN was applied also allowing unilateral actions that are conceived as temporary exceptions by the SC in order to adopt the necessary measures that could block ad libitum thanks to a connected right of veto.

The continuing trend of use of legitimate defense and its limits, as we have seen in the case of Ukraine and Israel in 2023 (Liakopoulos, 2024), concerns an opposition to the Ukrainian conduct to the Russian attack, that enters the scope of an exercise of a natural right, where legitimate defense against aggression (Nihreieva, 2022), and the relative support from Western countries to the government of Ukraine, legitimize the military intervention alongside Ukraine, in the title of legitimate collective defense, thus, limiting the external support of military support and contesting the profile of international law.

Military support as an expression of legitimate collective defense in the Ukrainian case remains at the limits of objectives and means rejecting the armed attack, that does not reach a war, that is like an animus bellandi directed against the Russian

people causing the fall in a legitimate way of the relative government.

According to art. 51, the sending of weapons is not part of the Arms Trade Treaty (ATT) (Liakopoulos, 2022a; Clancy, 2023), which provides for a series of prohibitions to war materials. These are measures adopted by the SC also favoring the commission of serious international crimes. The assessments have a legal character for weapons and do not prejudice the political, moral order. The possible consequences are of a general appeal to the international community.

The UN and the European Union are active through decisive acts in favor of a peaceful solution to the conflict but without the use of collective armed force. Perhaps a justifying theory of the special military operation was a security for the legitimate defense of one's own country connected with the threat of NATO enlargement in Eastern Europe and the accession of Ukraine to the European Union as a reason for humanitarian crisis and the need for protection of the Russian-speaking people after the self-proclamation that we saw a few years ago in the Donetsk and Lugansk Republics. Particularly, in the Donbass region as a continuous object of persecution for acts of genocide by the Ukrainian authorities.

What erga omnes obligations arise and justify the unilateral recourse to force?

From the previous paragraphs we have understood, that the relative positions, that had to do with the lawfulness of unilateral interventions and decided by the states alongside the positions of a rigorous multilateralism, that condemned unilateral interventions, made the recourse to force, as an articulated position, that included various erga omnes obligations offering in a comprehensive and unitary way the trend lines of a development of legal thought, that is evident through the commitment of the International Law Commission of the UN.

The UN Charter is the main source for the use of force that is not exhausted by the sources of international law that already exist in the matter. Moreover, the Charter takes into consideration and regulates the interest of peace of the entire international community that provides for a system where the use of force in an individual way by states is understood as a crime, as an international wrongdoing, within a system of collective security, that reacts against it.

The violation of peace, as a crime considered for the evolution and development of international law, has brought into consideration situations, that characterize the collective interest, that reacted in a necessary way for the continuous use of force. In practice, the SC has created a system of collective security,

that respected the situations of competence, that invested the functions of a community of states, that applied international law despite the paralysis of the SC and the legitimacy of states to intervene in an autonomous way, to protect collective interests and everything that includes the jus in bello, good faith, cooperation between states, etc.

In this case, resolving conflicts between states and defending individual interests also means exercising collective protection of common interests and values. Thus, erga omnes obligations play a reserved role for the codification of international law, where erga omnes obligations are reciprocal and horizontal relations between individual states. They protect individual interests, as a normative model, where the rules of domestic law protect the individual interests of private individuals, i.e the obligations existing within an international legal system.

Erga omnes obligations since the seventies were norms that protect the interests, goods and collective values of an international community, that consider the development of important stages. An old one was that of the Barcelona Traction case, in 1970 of the International Court of Justice (ICJ), which stated:

"(...) distinguish between the obligations that bind states towards the international community as a whole and those arising towards another state. By their nature, the former are a concern of all states. Due to the importance of the rights involved, all states can be considered as having an interest in their protection. They constitute erga omnes obligations (...) obligations arise, for example, in contemporary international law, from declaring acts of

aggression, acts of genocide, as well as from the principles and norms concerning the fundamental rights of people, including protection from slavery and racial discrimination (...)" (Liakopoulos, 2020a).

The values declared by the ICJ are always essential for the entire international community and considered mandatory for the adoption of countermeasures against states that have violated them.

Since 1976, the project for international crimes and offences, that was dedicated to the violation of erga omnes obligations for international crimes, was part of the project of the ILC. Art. 19 integrated the provisions of importance relating to the forms and degrees of international responsibility (Liakopoulos, 2020b) considered as legitimate and reacting as serious violations of erga omnes obligations. The British James Crawford considered it as a weak project in time and within the scope of the ILC (Crawford, Pellet, Olleson, 2010).

The acceptance by the international community of the violation recognized as a crime was part for the maintenance of international peace and security that prohibited aggression. Serious violations of an international obligation are important for the protection of the right of self-determination of peoples and the maintenance of force for colonial domination. A serious violation on a scale of international obligation was important for human beings that prohibited genocide, slavery, apartheid as serious essential obligation for the protection of the human environment, that prohibited massive pollution of the sea and

the atmosphere, as behaviors, that create international wrongs.

There is a lack of relative legal certainty for crimes and serious violations of erga omnes obligations, where even specific sanctions are serious and crimes react for violations and erga omnes obligations.

The project of 2001 has already brought some changes concerning suppressed crimes. Many states put the criminalization of international law as a reaction to the major powers that did not adhere to the statute of the ICC.

The project has developed a unitary regime for the unlawful acts, as a claim that prevented the typical consequences, specific for violations of obligations, that derive from mandatory norms, within a reality that has taken into account also the crimes of aggression, the collective legitimate defense, as lawful means of serious violation according to art. 40, where the prohibition of legitimate defense as serious violation of operational norms, were of help of assistance for the maintenance of the situation.

The notion of jus cogens (Linderfalk, 2020) attributes to states the legitimacy, that invokes the responsibility of each state, that has the obligation to violate the obligations of the international community as a whole, as states other than the one that is harmed according to articles 42 and 48. The functioning of secondary norms even is part of the category of erga omnes obligations. These are considerations that qualify countries, that

support countries at war, such as Ukraine, as a victim of aggression. In such cases, the sending of weapons are agreed according to the terms of impartiality, neutrality and belligerence in the parties to the conflict (Ambos, 2022; Talmon, 2022; Wentker, 2023).

In cases of traditional war, however, it is differentiated from the harmed state and states where members of the international community react to protect interests in common values within collective countermeasures.

The serious sanctions are foreseen in the project of 1996 for the crimes, that have eliminated the possibility of aggravated reactions. Such operation comes as an umbrella of an irrepressible structural notion inherent to the functioning of international order. The project was incomplete. We take into consideration the possible consequences, that respect the serious wrongs, that are foreseen by international law, where the codification tasks are missing and operating as a clause, that implicitly admits the forms of aggravated reaction, that respects international crimes, as extreme cases of the use of force. The will as an option scales down the measures, that can be assumed by states as countermeasures. The permitted wrongful reactions refer to the notion of lawful measures clarifying, that the exclusion of recourse to the unilateral use of force implements the erga omnes obligations according to international law, as a

ratio of a final guarantee of the order. Art. 55 of the 2001 draft (Liakopoulos, 2020b), as a lex specialis, according to the Charter of the UN, recalls art. 59, which prevails over international law considering that the guarantee system provided by the Charter itself is able to verify, operate in the situation of regime failure determining the conditions of fall-back as a return to international rules valid for cases concerning international peace and security, as a hypothesis for crimes and formal competence of the UN.

During 2015 the topic of jus cogens rules has established the group entrusted to the special rapporteur prof. D. Tladi, where he arrived at a concrete work with relative observations on 27 July 2022 included in a text entitled: "Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)"[1], which was transmitted to the general assembly of the states and provided a contribution according to the provisions of the project Crawford able to overcome the main gaps that are in contradiction with those of the past.

A first relative limit concerned the indiscriminate use of the category of jus cogens (Liakopoulos, 2020d). It was appropriate for the obligations of erga omnes because it identified the legal

1International Law Commission (ILC), Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), (2022), A/77/10: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf

consequences as peremptory norms of international law[2].

The first conclusions (10-16) are related to the conflict between peremptory norms of international law, normative acts, customary normative sources i.e. treaties, unilateral acts, decisions, resolutions, etc., international organizations, other names that do not have a jus cogens character determined according to the principle of non-derogability as primary and binding norms. Going forward with conclusions 17-19 the aspect of liability for wrongful acts by states and serious violations of a material nature has to do with peremptory norms that leave the provisions that are part of articles 40-41 of the draft articles on international liability of the project of 2001 and art. 41 (Liakopoulos, 2020b), which evaluates the relative functioning of secondary norms to regulate serious violations, as productive norms of erga omnes obligations.

The norms assume a regime, that considers the definition, as a norm that is in synergy, respectful with the Peremptory Norms of General International Law (Jus Cogens), as Obligations Owen to the International Community as Whole (Obligations Erga Omnes) according to art. 17 of the conclusions where the violation has as a consequence according to par. 2 of art. 17 that:

"(…) a state is entitled to invoke the responsibility of another state (…)",

as a solution that convinces the project of Crawford, which in

2ILC, Draft Conclusions, op. cit., "Conclusion 1.The present draft conclusions concern the identification and legal consequences of peremptory norms of general international law (jus cogens)".

reality was recalled[3] as a coincidence, that protects the productive norms as erga omnes obligations and according to the international norms of jus cogens. This is not a first-line belief since it refers to:

"(...) significant overlap between peremptory norms of general international law (jus cogens) and obligations erga omnes (...)[4] corresponding to the passages of a commentary of the same conclusion no. 17 where it stated that: "(...) all obligations erga omnes arise from peremptory norms of general international law (jus cogens) (...) indicating precisely the rules that are relevant for common marine spaces"[5].

These are uncertainties of a methodological nature, where the draft conclusions have reported the category of erga omnes obligations, that have banned the project of the articles on international responsibility of the state of 2001, as an open discourse for the implications of a report on imperative law norms (Tladi, 2022) and as a catalog of norms, where the ICL has given its own characteristics. The indications to a document, that is part of the working group of the report of prof. Tladi, deepens, what is part of Art. 41 of the project of 2001, which includes all states' reflections.

The obligations to cooperate arising from the states setting the ends of serious violations. The prohibition to recognize legitimate defense is created for serious violation of aid and assistance to keep the relative situation under control.

The use of interpretation keys of current events is emphasized

3Comments in conclusion n. 17, parr. 1 and 4.
4Comments in conclusion n. 19, par. 6.
5Comments in conclusion n. 17, par. 3.

starting from the Russian aggression that was made in Ukraine. The conflict between Russia and Ukraine is assessed according to an organization of sanctions, that are adopted on a large scale, within the international arena and as the obligation of cooperation between various states not necessarily neighboring but based on the general idea of the international community, that the violation of mandatory norms require the prohibition of providing aid and assistance to the maintenance of the violation, such as economic relations in Russia.

On the contrary, it is thought, that a treaty signed with Russia, that has to do with the cession of territories from the Ukraine would have been null and void given the violation of an obligation, that does not recognize, from the legitimate point of view, a particular situation of a serious violation of mandatory norms, that are acquired territories by force.

International crimes are exemplified in the project on international responsibility and have an imperative nature[6]. The concept of international crimes is linked to the violation of norms that refer to international crimes for individuals relevant

6The Conclusion n. 23 includes: a) the prohibition of aggression; b) the prohibition of genocide; c) the prohibition of crimes against humanity; d) the basic rules of international humanitarian law; e) the prohibition of racial discrimination and apartheid; f) the prohibition of slavery; g) the prohibition of torture; h) the right of self-determination. Instead, art. 19 of the 1996 draft does not refer to serious violations of international obligations that have to do with conservation, the protection of the human environment as well as with the formation of binding rules, including procedural ones, where they give rise to erga omnes obligations such as the rule that ensures individuals and access to the judge.

for the same treatment[7].

The annexation of countermeasures under the permitted profile to the ordinary regime of liability that has to do with the use of force and the authorization of the SC of the UN for serious violations of mandatory norms is connected with the conclusion n. 19 for the obligation of states to cooperate and to stop serious violations of obligations, that derive from mandatory norms of international law.

International law has not prohibited the adoption of unilateral measures but emphasizes that these are measures lawful according to international law and are expressed in favor of collective measures. This is the essence of the relative concept of cooperation of the same provision[8] as a means of international institutions of a multilateral nature according to the type of violation of a mandatory norm and to the collective security system of the UN and/or of other organizations[9].

The unilateral use of force under specific conditions is presented as:

"(…) saving clause (…) without prejudice clause (…) present draft conclusions are without prejudice to consequences that specific peremptory norms of general international law (jus cogens) may otherwise entail under international law (...)"[10].

7See for example par. 3 of the comments in relation to conclusion no. 22 which deals with the existence of consequences of mandatory law which are addressed in the draft conclusions also evoking the hypothesis of individual crimes in a limiting manner within the aspect of immunity and the jurisdiction of domestic courts.

8See Art. 7 and conclusion n.19.

9See parr. 8, and conclusion n.19.

10See the conclusion n. 22 and par. 1 of the relevant comment.

After seventy years of codification the issues based on disputes in tort matters for the liability of states governments have prevented the reasons of the project of 1996, which has transformed into even more precise rules with the final objective of promoting the codification of international law, as orientations of “pro-convention” and “anti-convention”. This is an orientation of a mediative position, that is connected with the general heritage of ideas within the ILC. It is viewed as coordination of a regime to combat serious violations of obligations arising from mandatory norms of international law and liability for violation of obligations erga omnes.

The sidelined attitude does not favor the will that ensures the absence of a normative text, where the margins of discretion and maneuver of autonomous decisions, have as a definitive path the recourse to force.

An extensive interpretation of the UN Charter and its connection with international law

The use of force, within the scope of the UN, and the lack of precise legislation in international law, is an interpretative path of the connection between the Charter of the UN and international law, by establishing the so-called conditions for a unilateral use not authorized by the SC and prohibited, as legitimate individual and collective defence according to Art. 51

of the Charter of the UN (Pellet, 2014).

This is an interpretation relating to the functioning of a collective security system, where limits are placed on situations, that concern the chaos and paralysis of the SC. In recent years the adoption of a code of conduct at international level is a difficult reality to resolve disputes given the atrocities of masses and international crimes with future reform processes.

We have two different approaches. The first one that deals with the unilateralism, that is widespread in the Western world and in the United States and the United Kingdom. It is a limit that considers the blockade in all the areas without authorization from the SC, as a reference to a perspective linked to the erga omnes obligations and within the rules of the international law as a basis of justification. The second one occurs in practice the evaluations that are convergent in orientations, where the basis of different arguments do not concern the perspective of protection of erga omnes obligations, within the authorization of the SC, that already results from the Anglo-American intervention in Iraq in 2003.

The erga omnes obligations are of a traditional nature. The second Gulf War and the military intervention of 2003 constitute an unlimited and illicit war on a par with a war of aggression (Liakopoulos, 2020c), that finds no legal basis in international law, where the motivations for an intervention are contrary to

the old one of 2003 in Iraq. The violations and disarmament and demilitarization are proposed by the SC and have perfected by the commission of real international crimes, as a reaction of the states that respected first of all the principles of the UN.

These are positions and conclusions that are agreed upon the NATO intervention in Kosovo in 1999, as divergent to the American intervention and the global coalition against ISIS, in 2014. This is an erga omnes perspective of obligations based on reasons linked to a humanitarian crisis, where the NATO intervention as a principle, that missing the authorization of the SC, considers armed retaliation as unlawful, i.e. as a method of conduct that conflicts with norms, principles of evaluation of a general nature, that are required by the international law and as reactions to an unlawful act, that is binding on the principle of good faith.

In other words it is a humanitarian objective to the operation as a necessity of the intervention. Also the principle of proportionality and jus in bello is part of the general principle of the useful effect (Liakopoulos, 2020g).

Interventions based on authorizations of the SC are considered by the UN according to the legitimacy of a management, that reconstructs the authorizations in a unitary way of the nature of making legitimate every intervention, that was conducted under the umbrella of the UN. Thus, it turns out that it is a category,

that distinguishes the types of authorizations, such as those of interventions, that can be grouped together with the UN system based on a precise definition of the purpose of an intervention, where the will of control of the SC relating to the carrying out of authorized operations, through a close relationship of political and strategic control, guarantees according to Art. 46 of the Charter to the SC, as a political body, the main task of establishing the organization of the armed forces with the help of the General Staff Committee, as a military body.

The will of the SC, as a control that exercises the military operations, with procedural supervision mechanisms, obliges the military commands to transmit to the Council the information reports. The objectives pursued by the military operations predefine the mandate of the military missions and the SC extends, interrupts and awaits the expiry of such mandate. This means that the SC reserves its resolutions and reformulates the mandate granted for the relevant withdrawal.

The resolutions of the SC for the use of force are respected through authorization for states in a manner compatible with the system of the UN and according to the spirit of Art. 42 of the Charter that links a system of behaviors according to the operations of the organization. The resolution is respected by conditions that configure the resolution of the SC ultra vires and as illegitimate, that allows states to intervene in unilateral

behaviors according to an effective control by the Council (Siciliano, 2008).

Dissenting states use, except the possibility through an acquiescence (Liakopoulos, 2022b), the practice for the disputes that are listed to the states. The adoption of a resolution is illegitimate without prevailing the fait accompli. The definition of operations attributable to the authority of the UN is authorized by the SC, that is contrary to the resolutions of peacekeeping missions. Also the SC does not exercise effective control of authorized operations, that remain the military commands of states under the umbrella of intervening coalitions. The authorizing resolutions, that are assumed by the SC, have sought to realize the blank delegations, as intervention powers of the states, that legitimizing unilateral behaviors applicable according to the rules of the general international law.

The practice that we have seen in Rwanda, in the Hutu genocide, was a classic example of authorizations that legitimize coercive actions conducted by the states within the system of the UN. These are interventions that justify not what comes from the Charter of the UN but establish international peace and security according to the rules of general international law, as a reaction of states to an illicit, that derives from serious violations of production norms and obligations of erga omnes, as in the case of serious violations of human rights and the principle of self-

determination of peoples.

On the contrary, the authorizations, as ultra vires, that respect the powers and competences of the SC, are justified according to general international law and clearly illicit according to the American intervention in Haiti in 1994, a category of authorizations that allows the performance of operations external to the system of the UN and assessable on the basis of general international law as reasons for justification. Thus, to perform external operations according to the system of the UN is assessable on the basis of general international law.

The interventions are carried out according to the authorizations and are found to be legitimate, lawful according to the basis of general international law and as it resorts to the authorizations of the SC. Thus, we can say that the reasoning is a bit perplexed with regard to the legal legitimacy, that is, political for its interventions, as a second-level, that provides the international organization, that responds to the need for certainty on the part of the states involved with the SC, that objectively makes the ascertainment of situations that justify the intervention.

The problem is thus linked to the bodies, that the international community has at its disposal actions for the application of general international law. Thus, states can rely on the organization of the UN and the institutional deficit of the international community, where the UN acts on the basis of the

Charter and its relative competences as a material, instrumental body of the international community. It is reiterated that the function and tendency of the SC, as an extensive interpretation of Art. 39 of the Charter (Pellet, 2014), responds to the notion of threat to peace by acting in a universal manner for the entire community, as the assignment of functions of the organization of the UN confers on states that they exercise autonomously and without entering into the basis of a phenomenon of attribution of jurisdictional competences of the SC not foreseen in the Charter of the UN. The manifestation of the criminal courts established in former Yugoslavia and in Rwanda is interpreted with the attribution of states to the body of a task that punishes international crimes, that are connected to serious violations and obligations of erga omnes.

Conclusions

It was experienced in the past a very unstable context regarding authorizations and the use of force. Certainly we will speak of uncertainty in the future given the fact that the central body that we need to rely on, namely the SC, has always been blocked by the veto of one or more of the members, who are permanent and thus it is paralyzed. The possibility for states to intervene unilaterally and make use of force leads to risks of legal abuse (Liakopoulos, 2023), deriving from the action of the SC in the

face of mass atrocities, considered intolerable for the collective conscience of the international community as willing to accept interventions with autonomous manner for states, that want a relative remedy.

Unilateral recourse is always unlawful and the authorization from the SC does not guarantee the lawfulness of an armed intervention, thus evaluating each individual case according to the circumstances pre-established by the Charter of the UN and the general international law. Such uncertainty is agreed with a broad discretion, that characterizes the decisions of the international level in matters, that affect the scope of the principle of international peace. A discretion that does not translate into the principle of the force of law before the law of force, thus resuming in a coherent and coordinated manner the codification of international law and above all the work of the ILC in matters of unlawful act and responsibility within the discipline of the use of force.

War and peace is the beloved topic for the action of the normative working system, that promotes the unity of the international community around values of essential interests, that are common to protect the channels of the UN institutions of a collective nature, as an expression of the “international community of states as a whole” according to the draft conclusions of the ILC of 2022 for the establishment of the

criteria that identify the operational norms of general international law (Tladi, 2024)[11].

The condition of a substantial character that corresponds to the will to protect the internal and international level of a number of states, agreements, international acts that guarantee compliance with the mandatory rules. These are listed in the relevant annex of the draft conclusions, where the progressive escalations between the antagonism of liberal democracies and autocracies of challenges coming from groups of an uncertain, many times, geopolitical between global south, that is developing countries that have a history with colonialism and economic conditions, policies at international level, that respect the richest countries, where the differences of a geopolitical role was important for the world balances, that are inserted in the position between different blocks and BRICS Plus[12], aspire to a new world order that is called active multipolarism. The vitality of principles and values follow an international order after the Second World

11 Conclusion n. 7: "International community of states as a whole. 1. It is the acceptance and recognition by the international community of states as a whole that is relevant for the identification of peremptory norms of general international law (jus cogens). 2. Acceptance and recognition by a very large and representative majority of States is required for the identification of a norm as a peremptory norm of general international law (jus cogens); acceptance and recognition by all states is not required (…)".

12 BRIC countries (Brazil, Russia, India and China) and was born in 2009 and extended to other countries where the definition in 2011 and now under BRICS Plus has reached a number of ten members after January 2024, namely countries such as Egypt, Iran, Saudi Arabia and the United Arab Emirates. Argentina also wanted to participate as a liberal and pro-Western government and as an alternative that is characterized as an economic alternative to a geopolitics of the Western world.

War, as a challenge that starts from the relaunch of the same.

The aggression against Ukraine, as the subject of a confirmation of elements, that are condemned by the UN, it could not be adopted by a resolution of condemnation at the SC, as the competent body, that took the mandatory decisions and coercive measures, that paralyzed the veto from the Russia and opposed the draft of resolution that was voted on 26 February 2022, condemning the act of aggression and calling for its cessation.

The SC through the Resolution No. 2623 (2022) of 27 February 2022 adopted the right of veto then submitted to the General Assembly on 2 March 2022 and approved with the Resolution (ES-11/1) of condemnation. The General Assembly also adopted resolutions that do not contain related recommendations for further and related sanctions measures against Russia. The General Assembly suspended Russia from the Human Rights Council of the UN based on a previous resolution by the same Council. The Resolution (ES-11/5) of 14 November 2022 addressed Russia's responsibility for aggression in Ukraine given the violation of the charter of the UN and the international law. It also affirmed the related obligation to repair the damage caused by its intervention (Liakopoulos, 2020f).

Similar positions are evident from the European Union[13], as well

13See the Resolution of the Committee of Ministers of the Council of Europe of 25 February 2022 (adopted the day after the start of the "Special Military Operation"): https://rm.coe.int/0900001680a5da51 and that of 16 March 2022, which first decided to suspend, then expel the Russian Federation from this organisation as of 16

as from a large majority of states, which are based on a complex of reactions such as economic sanctions (Liakopoulos, 2020e) and a comprehensive military support. Through NATO sanctions, the United States and the EU have adopted packages of measures against Russia of economic-financial nature and restrictive and individual measures against individuals-organs and private citizens of Russian origin.

The measures have also raised questions regarding the legitimacy of international and European law as well as the involvement of judicial bodies of the EU.

The sending of weapons is part of different initiatives of a judicial nature, that pursues criminal liability and integrates international crimes on the territory of Ukraine, as similar initiatives, where they complicate the meaning of an Israeli-Palestinian conflict. These elements are seen as an expression of a collective reaction of the international community in its entire system.

From the point of view of reactions at the international level we recall the courts that have taken this type of work against the conflict in Ukraine. We have the International Criminal Court where Ukraine itself has turned to ascertain the war crimes and crimes against humanity that are committed on its territory.

September 2022: https://www.coe.int/en/web/cm/news/-/asset_publisher/hwwluK1RCEJo/content/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022/16695

The ICJ which has also referred Ukraine verified the validity of various accusations that are brought by Russia. The justification for the special military operation is a term that has been used for the first time at the international level. The Ukrainian authorities are accused of acts of genocide against Russian-speaking minorities and violation of the UN Convention for the Prevention and Punishment of the Crime of Genocide of 1948.

The European Court of Human Rights has also presented a related request for precautionary measures where through individual appeals they are accepted. Russia has refrained from military attacks that did not want to cause irreparable damage to civilians, to property that has violated the various rights, that were guaranteed according to the European Convention of Human Rights, in particular the right to life, the prohibition of torture, right and respect for private and family life thus also starting initiatives at the European Parliament to create through a related international treaty an ad hoc tribunal for Ukraine to ascertain the crimes of aggression, that are committed against Russia and for damages to Ukraine, as crimes that all states are parties to the statute of the ICC and are excluded from its jurisdiction (Liakopoulos, 2019).

Conflicts and national criminal authorities, especially in the Ukraine environment, have ascertained and prosecuted all kinds of crimes committed during conflicts and the possibility of other

states to do with universal criminal jurisdiction. Thus, judicial initiatives have caused conflicting reactions and assessments, where the instrument of justice and deterrence against international crimes doubt the legitimacy of their own opportunity and which have exacerbated relations between states that are part of a conflict, which hinders the peaceful solution of the same. We can speak for the defense of law as the concretization of the obligation of states, that cooperate with lawful means in the violation of mandatory norms, according to Art. 41, par. 1 of the draft of the ILC of 2001 (Liakopoulos, 2020b), as proof of principles, values that have included the prohibition of aggression as a prohibition of territorial acquisitions by force and as a witness of the opinion juris (Jia, 2023).

The “Global South” whenever there is a war participates especially after the interventions in Afghanistan, Iraq and Libya, as a new model, that is so attractive in the recent years of international cooperation and development with an inclusive way, as an anti-war model contributing to the prevention of conflicts, to the general spirit of the UN, where with an unequivocal way the connection between peace and cooperation to resolve international disputes of a social, cultural, humanitarian, economic nature are objectives within an existing framework of reform, improvement and what we call an

uncertain future of politics and diplomacy in the international arena.

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